IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1849

CHICAGO SHERATON CORPORATION,
AN ILLINOIS CORPORATION,
Appellant,

vs.

SEYMOUR ZABAN AND HARRY H. SEMROW, INDIVIDUALLY AND AS MEMBERS OF THE COOK COUNTY BOARD OF APPEALS; THOMAS M. TULLY, COOK COUNTY ASSESSOR; STANLEY T. KUSPER, JR., COOK COUNTY CLERK; AND EDWARD J. ROSEWELL, COOK COUNTY TREASURER,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

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Even on the premise that the less said about the decision below the better, the defendants-appellees, within the space of two and one-half pages, have distorted the facts of this case and the holding of the Illinois Supreme Court, and have avoided the issues in this appeal.

(1) By adroit use of the singular rather than the plural, the defendants twice endeavor to rewrite the facts and the holding below. They initially say that:

> "The taxpayer's remedy is by way of paying the allegedly excessive taxes under protest, and then objecting in court

> in a proceeding [i.e., the 'legal' procedure] separate from the Certificate of Error proceeding." (Motion, p. 2)

They then argue that:

> "The taxpayer merely failed to perfect its remedy to challenge the tax and thereafter attempted to create a remedy by misconstruing the Illinois Certificate of Error statute." (Motion, p. 3)

First, the Illinois Supreme Court most assuredly did not say that "[t]he taxpayer's remedy"—with the implication that this was the only one—was the legal procedure. Quite the contrary. The Illinois Court necessarily held that there were two statutory procedures for taxpayers to have their assessments corrected; the legal one and the administrative one, each "separate and distinct" (App. A, at A5) from the other. (There also was a third, the equitable one, which later became unavailable (App. A, at A7).)

If there had been only one taxpayer's remedy, the legal procedure, we certainly would have taken it. Our claim here is that, once again, "[t]he trouble with Illinois is not that it offers no procedure. It is that it offers too many. . . ." *Marino* v. *Ragen*, 332 U. S. 561, 565 (1947) (Rutledge, J. concurring).

Second, "[t]his taxpayer"—again the suggestive singular—was not the only taxpayer who, as the defendants put it, "attempted to create a remedy by misreading the Illinois Certificate of Error statute" (Motion, p. 3). Some eight to twenty thousand Cook County taxpayers each year—almost half the taxpayers who sought assessment correction*—likewise did so. Would any of

* Ganz, et al., *Review of Real Estate Assessments—Cook County (Chicago)* v. *Remainder of Illinois*, 11 JOHN MARSHALL J. PRACT. & PROC. 17, 31; nn. 59, 61 (1977):

> "59. The . . . number of Certificates of Error signed by the Assessor pursuant to ILL. REV. STAT. ch. 120 § 604 (1975) for the tax years 1970 through 1975 is as follows:
>
> * * *

[Tax Year]		Certificates Error
1970	-	2,300
1971	-	1,800
1972	-	11,800

(Footnote continued on next page.)

them have taken the Certificate of Error route had they known that it would ultimately be subject to the delayed, arbitrary, and non-reviewable whim of the Board of Appeals?

(2) The defendants indirectly approach the issues in this appeal by correctly (though incompletely) summarizing *Central of Georgia Ry.* v. *Wright*, 207 U. S. 127 (1907), as holding that there is "a due process right to be heard at *some* time prior to the final fixing of liability, on the valuation issue" (Motion, p. 3). But they make no effort to distinguish its main holding from the case at bar. Nor can they.

The taxpayer in *Central of Georgia* had precisely the choice of assessment procedures we had; a "right to be heard" under one procedure, no right under the other. This Court condemned the duality there. *Central of Georgia*, and the other cases cited by the defendants at pp. 2, 3, establish that the assessment

(Footnote continued from preceding page.)

1973	-	15,700	Real Estate
		4,300	Homestead
1974	-	4,000	Real Estate
		5,800	Homestead
1975	-	4,400	Real Estate (approx.)
		4,000	Homestead (approx.)

> Letter from Daniel Peirce, Legal Counsel to the Cook County Assessor's Office, to Alan S. Ganz (Dec. 23, 1976)."
>
> "61. The total number of complaints filed [with the Board under the 'legal' procedure] each year for the tax years 1970 through 1975 are as follows:

Tax Year		Complaints Filed
1970	-	13,496
1971	-	10,311
1972	-	16,306
1973	-	15,956
1974	-	20,090
1975	-	22,262

> Reply from Donald E. Erskine, Chief Deputy of the Board of Appeals, to letter from Alan E. Ganz (July 27, 1976)."

["Homestead" refers to certain statutory exemptions in favor of disabled veterans, persons 65 years of age or older, etc. ILL. REV. STAT., ch. 120 § 500.23, etc.; Sections 19.23, etc., of the Revenue Act.]

procedure being challenged—not some other "separate and distinct" one—must accord Due Process.

Curiously, or perhaps not so curiously, the defendants do not comment on the fact that the Board thought a hearing was required. They held a "hearing" (Juris. Stat., p. 9).

Unfortunately, we do not have the benefit of the Illinois Supreme Court's view of *Central of Georgia*. Their opinion does not cite that case.

(3) Lastly, the defendants attempt to distinguish *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673 (1930), by challenging our contention (Juris. Stat., pp. 19, 20) that the Board would dismiss a valuation complaint filed by a taxpayer holding a certificate of error, saying that the contention is "not substantiated by the record" and, by reason of the time sequence, is "clearly erroneous." (Motion, p. 3.)

But how do they explain what the "record" before the Illinois Court established, and what we have demonstrated here (Juris. Stat., p. 13, n. 30), that some certificate of error holders—"no more than 10 percent"—did in fact also file valuation complaints?

CONCLUSION.

The importance and substantiality of the questions presented have not been denied. The only claim is that this taxpayer, and tens of thousands of others, erred in allowing themselves to be enticed into following a procedure which the Illinois Supreme Court, now for the first time, holds gives them "neither a statutory nor constitutional right to participate in the certificate of error proceeding or to challenge any alleged irregularities in that proceeding" (App. A, at p. A6)—including admitted constructive fraud. When a State makes an assessment for taxing purposes, it "must, in so doing, accord the parties due process of law." *Brinkerhoff-Faris*, 281 U. S. at 682.

In light of the inability of the defendants to face the issues presented in the appeal, the need for plenary review of the action

below is indisputable. And in light of their inability to distinguish this Court's precedents, plaintiff-appellant suggests that summary reversal on the authority of *Central of Georgia* is justified.

Respectfully submitted,

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